

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)	
BRUNO'S SUPERMARKETS, LLC,)	
)	Chapter 11
Debtor.)	Case No. 09-00634
)	

DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND (c) FOR
AUTHORIZATION TO CONTINUE DEBTOR'S WORKERS' COMPENSATION
PROGRAMS, ALL OTHER INSURANCE POLICIES, ALL AGREEMENTS RELATING
THERE TO, AND PAY ALL OBLIGATIONS IN RESPECT THEREOF

COMES NOW, Bruno's Supermarkets, LLC ("Bruno's" or "Debtor"), as debtor and debtor-in-possession and pursuant to §§ 105(a), 363(b) and (c) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), moves this Court (this "Motion") to enter an order authorizing Debtor to continue its worker's compensation programs, all other insurance policies, and all agreements relating thereto, and to pay all obligations in respect thereof. In support of this Motion, Debtor relies on the *Affidavit of James Grady in Support of Chapter 11 Petitions and First Day Motions*, filed contemporaneously herewith, and states as follows:

JURISDICTION AND VENUE

1. On February 5, 2009 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. Debtor continues to operate its business and manage its assets as debtor in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a), 363(b) and (c).

FACTUAL BACKGROUND

Company Background and Industry

3. Bruno's is a privately held company headquartered in Birmingham, Alabama that owns and operates three grocery store chains: Bruno's, Food World, and FoodMax. Combined, Bruno's has a total of 66 locations in Alabama and the Florida panhandle. There are a total of 2 FoodMax locations. Food World has 41 locations with approximately 34 stores in Alabama and 7 stores in Florida. Bruno's has a total of 23 locations with 21 stores in Alabama and 2 stores in Florida. Bruno's employs a total of approximately 4,200 employees, approximately 40% of which are full time employees and approximately 60% of which are part time employees. Bruno's has a total of 2,600 union employees and 1,600 non-union employees. Bruno's is a party to certain collective bargaining agreements with the United Food & Commercial Workers Local #1657 (collectively, the "CBA"), and the majority of Bruno's employees are covered by the CBA.

4. Bruno's was founded in 1933 by Joe Bruno with the opening of an 800 square foot corner grocery store in Birmingham, Alabama. By 1959, Bruno's had grown to be a chain of 10 grocery stores. In 1972, Bruno's launched Food World, which was designed as a chain of discount grocery stores. By the early 1990s, Bruno's was one of the Top 40 grocery store chains in the country as measured by sales volume. In 1995, after a prolonged period of stagnant sales

and earnings, Bruno's was acquired by Kohlberg Kravis Roberts & Co in a leveraged buyout. Due to the significant debt incurred by Bruno's through the leveraged buyout and substantial losses in 1996 and 1997, Bruno's filed for bankruptcy under chapter 11 of the Bankruptcy Code in early 1998. At the time of Bruno's emergence from bankruptcy in 2000, Bruno's operated approximately 152 stores in Alabama, Georgia, Florida and Mississippi. Bruno's was acquired, in 2001, by Ahold USA, Inc., the U.S. subsidiary of Royal Ahold, an international supermarket conglomerate. In 2005, Bruno's was sold to Lone Star Fund V (U.S.), L.P. ("Lone Star Five"), one of the funds held by the private equity firm Lone Star Funds. Following the sale to Lone Star Five, Bruno's sold approximately 100 of its stores to C & S Wholesale Grocers.

Debt Structure

5. Bruno's has a revolving line of credit with Regions Bank (the "Revolver"). The current amount outstanding under the Revolver is approximately \$10.8 million. The Revolver is secured by the majority of Bruno's assets. Bruno's owes approximately \$22.5 million in accounts payable to trade and other creditors. There is also approximately \$6.8 million owed to various state and local taxing authorities. Bruno's also owes an affiliated company, Bi-Lo, LLC ("Bi-Lo"), approximately \$3.5 million.

6. The vast majority of Bruno's grocery stores are located on leased property. Bruno's does, however, own the real property on which five of its stores are located.

Events Leading to Bankruptcy

7. Debtor's bankruptcy filing has been precipitated by a variety of factors that have led to a deterioration in Bruno's business and a lack of liquidity. Over the past 18 months, the country has seen a significant decline in the economy as a whole. The economic decline has

resulted in a significant decrease in consumer spending, including food and grocery items. This decreased demand has led to a decline in Bruno's sales.

8. Furthermore, Bruno's has also seen an increased amount of competition in its core market from other grocers. With an abundance of older locations, Bruno's has had difficulty competing with the newer grocery stores that have moved into its markets. This increased competition from newer grocery stores has reduced Bruno's market share.

9. Additionally, the frozen credit markets have limited the availability of capital for improvements to Bruno's stores to allow Bruno's to compete with the newer stores of its competitors. Furthermore, the lack of available capital has resulted in Bruno's being unable to locate sufficient working capital with which to operate its stores.

Debtor's Insurance Programs.

10. In the ordinary course of its business, Debtor maintains numerous insurance policies and workers' compensation programs (collectively, and as more described in detail below, the "Insurance Programs") through several different insurance carriers (the "Insurance Carriers").¹ The Insurance Programs include, without limitation, workers' compensation plans, automobile insurance, crime and theft insurance, general and professional liability insurance, fiduciary liability insurance, directors' and officers' liability insurance, employment practices liability insurance, as well as a letter of credit which provides security for Debtor's obligations under certain insurance policies.²

¹ A list of the insurers and the coverage they provide is attached hereto as Exhibit "A."

² Debtor is filing contemporaneously herewith its *Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authorization to Pay Pre-Petition Wages, Compensation, and Employee Benefits* seeking court authority to continue payment of, among other things, costs associated with employee related insurance benefits, including medical and health insurance, prescription insurance, life insurance, dental insurance, and other such similar benefits.

11. Prior to the Petition Date, Debtor utilized Covenant Risk Partners, Inc.³ ("Covenant Risk"), for the procurement of the vast majority of Debtor's insurance policies, which include, without limitation, property, general liability, automobile liability, workers' compensation, umbrella, excess umbrella, fiduciary liability, directors liability, officers liability, and employment practices liability. Covenant Risk also provides a number of ancillary administrative services, including consulting and risk management services. Debtor pays Covenant Risk an annual fee for these services, which breaks out to a monthly fee of \$13,500 plus expenses for its services. Debtor is current on its payments to Covenant Risk for its fees.

12. With respect to the majority of these policies, Debtor pays an insurance broker or an insurance premium finance company directly for all premiums and other amounts due under each respective policy, and such broker remits the payments to corresponding Insurance Carrier(s). Debtor is current on the payment of premiums, deductibles, and other payments made to these various brokers and/or premium finance companies. With respect to policies for which Debtor remits premiums, deductibles, and other payments directly to an Insurance Carrier, Debtor is current on these payments as well.⁴

13. Prior to the Petition Date, Debtor utilized Broadspire ("Broadspire"), a third-party claims administrator, to process claims against Debtors' Workers' Compensation, Automobile and General Liability Programs (as defined and described in more detail below). Debtor pays Broadspire an annual fee for these services, which breaks out to a quarterly fee of \$78,578.25 plus expenses for its services. As of the Petition Date, one quarterly installment payment in the

³ Although Covenant Risk functions as Debtor's risk management consultant and procures insurance policies, it is not an insurance broker and does not provide brokerage services with respect to Debtor's insurance policies.

⁴ Debtor is current on its payments with respect to billed amounts owed pursuant to the Insurance Programs, the majority of which are paid in advance. To the extent any of the Insurance Programs are billed in arrears, Debtor may owe monies for the unbilled coverage.

amount of \$78,578.25 is in transit to Broadspire (the "Quarterly Installment Payment"). Except with respect to the Quarterly Installment Payment in transit, Debtor is current on its payments to Broadspire for its fees.

(a) The Workers' Compensation Program.

14. Under the laws of the states in which it operates, Debtor is statutorily required to maintain workers' compensation and employer's liability policies and programs (collectively, the "Workers' Compensation Program"), and to provide its employees with workers' compensation coverage for claims arising from or related to their employment with Debtor. Pursuant to such state law requirements, Debtor maintains its Workers' Compensation Program in the states in which it operates through a third-party insurance policy with a high deductible, carried by Ace American Insurance Company ("Ace"). Claims made under such policy are processed by Broadspire.

15. Premiums for the current Workers' Compensation Program are based on a fixed rate of estimated payroll and are subject to audit. To the extent Debtor has over or underpaid premiums based on such audits, they are entitled to a refund, or are required to make an additional payment, respectively.

16. As of January 31, 2009, there were approximately fifty (50) workers' compensation claims pending against Debtor (the "Workers' Compensation Claims"). The estimated total pre-petition potential exposure relating to Workers' Compensation Claims is \$1,150,987.00.

17. In conjunction with its administration of Workers' Compensation Claims, Broadspire pays the claimants directly and bills Debtor for those claims in arrears. Debtor reimburses Broadspire for the corresponding amount on a weekly basis by placing funds in an escrow account or accounts held for the benefit of Broadspire (collectively, the "Broadspire

Escrow"). Any default in reimbursing Broadspire for payments relating to the Workers' Compensation Claims would trigger a draw down on the Workers' Compensation Security (as defined below) held by Ace.

18. As security for Debtor's obligations to Ace and to Broadspire for workers' compensation deductible losses, Debtor has obtained, and there is in place as of the Petition Date, an irrevocable standby letter of credit in the amount of \$4,456,908.00, issued by Bi-Lo, LLC on behalf of Debtor for the benefit Ace (the "Workers' Compensation Security").

19. Payment of the pre-petition Workers' Compensation Claims is essential to the continued operation of Debtor's business, since there is a risk that eligible claimants will not receive payments with respect to employment-related injuries, which may have a devastating effect on the financial well-being and morale of Debtor's employees and their willingness to remain in Debtor's employ. Therefore, Debtor is requesting authority to pay any and all amounts due and owing with respect to the Workers' Compensation Program, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date, and maintain and continue pre-petition practices with respect to the Workers' Compensation Program, including, among other things, the Workers' Compensation Security, and allowing workers' compensation claimants, to the extent they hold valid Workers' Compensation Claims, to proceed with their claims directly against the Insurance Carriers and/or Broadspire, under the applicable insurance policy or program.

(b) Automobile and General Liability Insurance Programs.

20. Debtor maintains automobile liability and general liability policies through third-party high deductible insurance programs carried by various Insurance Carriers (respectively, the "Automobile and General Liability Programs"). All claims made under the Automobile and General Liability Programs are processed by Broadspire.

21. Debtor is required to pay premiums for the Automobile and General Liability Programs based upon a rate established and billed by the respective Insurance Carrier. The premiums for most of these policies are determined annually and are paid either to an insurance broker, which pays the premiums to the respective Insurance Carriers on Debtor's behalf, or in some instances, directly to the Insurance Carrier.

22. As of January 31, 2009, there were approximately seventy eight (78) automobile and general liability claims pending against Debtor (the "Automobile and General Liability Claims"). The estimated total pre-petition potential exposure relating to Automobile and General Liability Claims is \$1,189,962.00.

23. Similar to the Workers' Compensation Claims, Broadspire administers Automobile and General Liability Claims and pays these claimants directly. Broadspire bills Debtor for those claims in arrears, and Debtor reimburses Broadspire for the corresponding amount on a weekly basis by placing funds in the Broadspire Escrow.

24. The Automobile and General Liability Programs are essential to the ongoing operation of Debtor's business, because Debtor would be exposed to substantial liability for any damages resulting to persons and property of Debtor and others, in the event such policies were terminated for non-payment. Therefore, Debtor is requesting authority to pay any and all amounts due and owing with respect to any policy relating to the Automobile and General Liability Programs, including funding the Broadspire Escrow relating to Automobile and General Liability Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date, and maintain and continue pre-petition practices with respect to the Automobile and General Liability Programs, including, among other things, allowing Automobile and

General Liability claimants, to the extent they hold valid claims, to proceed with their claims under the applicable insurance policy or program.

(c) Other Property, Casualty, and Liability Insurance Programs.

25. In addition to the Workers' Compensation Programs and Automobile and General Liability Programs, Debtor also maintains include other property, casualty, and liability insurance policies, which provide Debtor with insurance coverage for claims relating to, among other things, property, umbrella, excess umbrella, crime, fiduciary liability, directors' and officers' liability, and employment practices liability.

26. Debtor is required to pay premiums for these policies based upon a rate established and billed by the respective Insurance Carrier. The premiums for most of these policies are determined annually and are paid either to (i) a broker (which pays the premiums to the respective Insurance Carrier on Debtor's behalf); (ii) an insurance premium finance company; or in some instances, (iii) directly to the Insurance Carrier.

27. In most instances, claim losses and expenses with respect to these insurance programs are paid by the respective Insurance Carriers directly to the claimants and others as incurred. The respective Insurance Carriers bill Debtor for reimbursement of those losses and expenses which fall under the deductible or self-insured retention amounts.

28. These policies are essential to the ongoing operation of Debtor's business because Debtor would be exposed to substantial liability for any damages resulting to persons and property of Debtor and others, in the event such policies were terminated for non-payment. Therefore, Debtor is requesting authority to pay any and all amounts due and owing with respect to these insurance policies, and maintain and continue pre-petition practices with respect to these insurance programs, including among other things, allowing claimants, to the extent they hold

valid claims under the applicable insurance policy or program, to proceed with their claims directly against the respective Insurance Carrier(s).

RELIEF REQUESTED

29. By this Motion, pursuant §§ 105(a) and 363(b) and (c) of the Bankruptcy Code, and pursuant to the "necessity of payment" doctrine, Debtor seeks authorization: (a) to continue to pay all pre-petition amounts, if any, related to all Insurance Programs, including among other things: premiums, deductibles, and other amounts due, including retroactive adjustments; (b) to maintain and continue on an uninterrupted basis pre-petition practices with respect to all Insurance Programs, including *inter alia*, allowing claimants to proceed directly against any Insurance Carrier(s) and/or Broadspire to the extent that such claimants have valid claims under the respective insurance program or policy; (c) to continue to pay all amounts due and owing with respect to the Workers' Compensation Program, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; (d) continue to maintain the Workers' Compensation Security and any other security maintained in respect of the Insurance Programs (collectively, the "Insurance Security"); (e) to continue to pay all amounts due and owing with respect to the Automobile and General Liability Programs, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; and (f) maintain and continue to make post-petition payments with respect to the Insurance Programs, including, among other things, paying premiums, deductibles, and paying other amounts due on an uninterrupted basis.

30. The annual premiums for Debtor's workers' compensation, liability, and property coverage aggregate approximately \$1,846,458.00. As of the Petition Date, Debtor believes it is current in respect of its pre-petition premiums and deductible reimbursements under these

policies. In an abundance of caution, to the extent a premium or deductible reimbursement relating to a period prior to the Petition Date is outstanding with respect to any insurance policy, Debtor seeks authority to make such payment in the same manner that such payments were made prior to the Petition Date.

31. In addition, Debtor proposes to continue to make all post-petition payments with respect to the Insurance Programs, including, without limitation, deductibles, premiums, and payments to the Insurance Carriers and/or Broadspire, where applicable. Debtor proposes to pay all obligations arising under or related to these programs and policies subsequent to the Petition Date in the ordinary course of business, not on an accelerated basis, and in accordance with the terms of these programs and policies.

32. Debtor also seeks authority to renew any of the Insurance Programs post-petition, as Debtor sees fit in the exercise of its ordinary course of business discretion, if and/or when such Insurance Programs expire after the Petition Date.

33. As a result of the commencement of Debtor's chapter 11 case, and in the absence of an order of the Court providing otherwise, Debtor will be prohibited from paying or otherwise satisfying all pre-petition obligations related to the Insurance Programs, including but not limited, to, Broadspire's Quarterly Installment Payment, which is in transit as of the Petition Date, and other payments relating to funding the Broadspire Escrow Account (the "Pre-Petition Insurance Program Obligations"), and the checks, drafts, wire transfers, and ACH direct deposit transfers issued and effected in respect of such Pre-Petition Insurance Program Obligations will be dishonored or rejected. Debtor seeks authority to issue new post-petition checks, or effect new fund transfers, on account of the Pre-Petition Insurance Program Obligations to replace any pre-petition checks or fund transfer requests that may be dishonored or rejected. Debtor has, or

will have, on deposit sufficient available funds in its bank accounts to satisfy all the Pre-Petition Insurance Program Obligations, so that Debtor's banks will not be prejudiced by any order authorizing them to honor Debtor's checks or fund transfer requests with respect to such amounts.

34. Debtor further requests that the Court authorize Debtor's banks and financial institutions to process, honor and pay any and all checks on account of obligations to be paid pursuant to this Motion and to rely on the representations of Debtor as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability to any party for following Debtor's instructions.

BASIS FOR RELIEF

35. This Court is vested with the authority to grant the relief requested herein pursuant to Bankruptcy Code § 105(a), which provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As set forth in the *Affidavit of James Grady in Support of Chapter 11 Petition and First Day Motions*, because Debtor's pre-petition Insurance Programs provide a comprehensive range of coverage for Debtor and its business and properties, Debtor must continue these programs post-petition in full force and effect. If these policies were allowed to lapse, Debtor would be exposed to substantial liability for any damages resulting to persons and property of Debtor and others, which exposure would severely limit Debtor's chance at a successful reorganization.

36. Also, maintenance of the directors' and officers' liability policy is necessary to the retention of Debtor's senior management who are critical to the success of Debtor's business and reorganization, and to enable Debtor to financially indemnify its officers and directors per the requirements set forth in Debtor's operating agreement.

37. Moreover, pursuant to the "doctrine of necessity," courts often allow the immediate payment of pre-petition claims where the payments are essential to debtor's continued operations, even though the Bankruptcy Code may not explicitly authorize payment. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824 (Bankr. D. Del. 1999) (noting that a debtor may pay a class of pre-petition creditors in advance of a confirmed plan if such payment is essential to the continued operation of the business). The doctrine of necessity recognizes that paying pre-petition obligations outside of the plan of reorganization is often necessary to realize the paramount purpose of a chapter 11 reorganization – *i.e.*, preventing the liquidation of debtor in possession and preserving its potential for rehabilitation.

38. It is essential to the continued operation of Debtor's business and its efforts to reorganize that all Workers' Compensation Claims and state fees and assessments are paid on a timely basis, and that the Insurance Security is maintained. In order to ensure that Workers' Compensation Claims are paid, Debtor must be allowed to continue funding the Broadspire Escrow Account on a weekly basis. The risk that eligible claimants will not receive payments with respect to employment-related injuries may have a devastating effect on the financial well-being and morale of Debtor's employees and their willingness to remain in Debtor's employ. Departures by employees at this critical time may result in a severe disruption of Debtor's business to the detriment of all parties in interest.

39. This Court has approved payment of pre-petition insurance monies on the grounds that the payment of such claims was necessary to effectuate a successful reorganization in other chapter 11 cases. *See, e.g., In re Citation Corp.*, Case No. 04-08130-TOM (Bankr. N.D. Ala. Sept. 18, 2004); *In re Meadowcraft, Inc.*, Case No. 02-06910 (TOM) (Bankr. N.D. Ala. Jan. 13, 2003); *In re Alabaster Indus., Inc.*, Case No. 98-02220 (BGC) (Bank. N.D. Ala. Oct. 29, 1998).

40. Moreover, Debtor seeks relief to conduct activities squarely within its normal scope of business operations, and debtors in possession need not specifically seek authorization to conduct activities or use funds constituting property of the estate with respect to ordinary course transactions. *See, e.g.* 11 U.S.C. § 363(c)(1); *compare* §363(b)(1) (providing that a debtor-in-possession need only seek notice and hearing to conduct activities or use property of the estate *outside* the ordinary course of debtor's business). In the event this Court deems the requested relief to be outside the ordinary course of Debtor's business, this Court nevertheless is empowered to authorize Debtor to expend these funds outside of the ordinary course of debtor's business pursuant to Bankruptcy Code § 363(b). *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D. N.Y. 1989) ("Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances"); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 155 (D. Del. 1999) ("Section 363(b) should be interpreted liberally to provide a bankruptcy judge with 'substantial freedom to tailor his orders to meet differing circumstances' and to avoid 'shackling the judge with unnecessarily rigid rules'" (internal citation omitted)).

41. Although Bankruptcy Code § 363(b) does not set forth a standard for determining when it is appropriate to authorize transactions outside of the ordinary course, courts generally grant such relief if a debtor articulates a sound business purpose. *See, In re Friedman's, Inc.*, 366 B.R. 891, 895 (Bankr. S.D. Ga. 2005) (upholding debtor's implementation of a key-employee retention plan when the plan was advanced "after application of sound business judgment," and would ensure stable continuity of the reorganizing debtor). The "debtor's business decision should be approved by the court unless it is shown to be so manifestly unreasonable that it could

not be based upon sound business judgment, but only on bad faith, or whim or caprice." *Id.* at 895 (internal citation omitted).

42. As set forth above, Debtor has sound business justifications for granting the relief requested herein. Moreover, Debtor estimates that the total amount proposed to be paid with respect to the Pre-Petition Insurance Program Obligations is *de minimis* compared with the size of Debtor's estate, the importance of Debtor's employees to the reorganization effort, and the potential liability exposure of Debtor absent insurance coverage. Based upon the foregoing, the relief requested herein is amply justified and, in the case of the Workers' Compensation Programs, may be mandatory under state or federal law. Consequently, Debtor must be allowed to continue its Pre-Petition Insurance Programs post-petition.

43. To the extent that any Insurance Program, or any other agreement, policy, or contract described herein, including any agreement with the Broker, is deemed an executory contract within the meaning of Bankruptcy Code § 365, Debtor does not through this Motion intend to assume the same. Court authorization of payments in respect thereof shall not be deemed to constitute post-petition assumption or adoption thereof as an executory contract pursuant to Bankruptcy Code § 365. Debtor will review the Insurance Programs, the agreement with the Broker, and other agreements and reserves all its rights under the Bankruptcy Code with respect thereto.

NOTICE

44. Notice of this Motion has been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to Regions Bank, Debtor's pre-petition lender; (3) counsel for Debtor's proposed post-petition lender; (4) the holders of Debtor's equity interests; (5) Debtor's

twenty (20) largest unsecured creditors; and (6) the District Director of the Internal Revenue Service for the Northern District of Alabama.

45. No previous request for the relief requested herein has been made to this or any other court.

WHEREFORE, Debtor requests the Court enter an order substantially similar to the order attached hereto as Exhibit "B," and grant Debtor such other and further relief as this Court may deem just and proper.

/s/ Marc P. Solomon
Robert B. Rubin
Derek F. Meek
Marc P. Solomon
Attorneys for Debtor
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EXHIBIT "A"

BRUNO'S INSURANCE POLICIES

<u>Coverage</u>	<u>Carrier</u>
Crime	National Union
D&O	Huston Casualty, AIG
Fiduciary Liability	Chubb
Employment Practices	Houston Casualty, AIG
All Risk Property/Terrorism	Liberty Mutual
All Risk Property/Terrorism	IRI/Swiss Re
Excess All Risk Property	RSUI Indemnity Company
Excess All Risk Property	Montpelier Re
Excess All Risk Property	C N A
Excess All Risk Property	Arch
Excess All Risk Property	Axis
Excess All Risk Property	Integon Specialty
Excess All Risk Property	Aspen
Excess All Risk Property	Lancashire
Excess All Risk Property	RSUI Indemnity
Commercial General Liability	ACE
Automobile Liability (High Deductible)	ACE
Landlord Provided Insurance	Various
Commercial Umbrella Liability	XL Insurance America, Inc.
Excess Umbrella	ACE
Workers Compensation (High Deductible)	ACE

"Exhibit B"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)	
BRUNO'S SUPERMARKETS, LLC,)	
)	Chapter 11
Debtor.)	Case No. 09-00634
)	

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b) AND (c) AUTHORIZING
DEBTOR TO CONTINUE DEBTOR'S WORKERS' COMPENSATION PROGRAMS,
ALL OTHER INSURANCE POLICIES, ALL AGREEMENTS RELATING THERETO,
AND PAY ALL OBLIGATIONS IN RESPECT THEREOF**

This matter came to be heard upon the motion (the "Motion") of Bruno's Supermarkets, LLC ("Bruno's" or "Debtor") as debtor and debtor in possession, pursuant to §§ 105(a) and 363(b) and (c) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") for authorization to: (a) to continue to pay all pre-petition amounts, if any, related to all Insurance Programs (unless otherwise defined, capitalized terms shall be used herein as they are defined in the Motion), including among other things: premiums, deductibles, and other amounts due, including retroactive adjustments; (b) to maintain and continue on an uninterrupted basis pre-petition practices with respect to all Insurance Programs, including *inter alia*, allowing claimants to proceed directly against any Insurance Carrier(s) and/or Broadspire to the extent that such claimants have valid claims under the respective insurance program or policy; (c) to continue to pay all amounts due and owing with respect to the Workers' Compensation Program, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; (d) continue to maintain the Workers' Compensation Security and any other security maintained in respect of the

Insurance Programs (collectively, the "Insurance Security"); (e) to continue to pay all amounts due and owing with respect to the Automobile and General Liability Programs, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; and (f) maintain and continue to make post-petition payments with respect to the Insurance Programs, including, among other things, paying premiums, deductibles, and paying other amounts due on an uninterrupted basis.

Upon consideration of the *Affidavit of James Grady in Support of the Chapter 11 Petition and First Day Motions*; the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; due notice of this Motion has been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to Regions Bank, Debtor's pre-petition lender; (3) counsel for Debtor's proposed post-petition lender; (4) the holders of Debtor's equity interests; (5) Debtor's twenty (20) largest unsecured creditors; and (6) the District Director of the Internal Revenue Service for the Northern District of Alabama; and it appearing that no other or further notice need be provided; the Court having determined that the relief sought in the Motion is in the best interests of Debtor, its creditors, and all parties in interest; upon the Motion and all of the proceedings before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that Debtor may, on account of those matters described in the Motion and in the manner described in the Motion, without prejudice to Debtor's right to seek additional or further relief in the future, in the ordinary course of business: (a) to continue to pay all pre-petition amounts, if any, related to all Insurance Programs, including among other things:

premiums, deductibles, and other amounts due, including retroactive adjustments; (b) to maintain and continue on an uninterrupted basis pre-petition practices with respect to all Insurance Programs, including *inter alia*, allowing claimants to proceed directly against any Insurance Carrier(s) and/or Broadspire to the extent that such claimants have valid claims under the respective insurance program or policy; (c) to continue to pay all amounts due and owing with respect to the Workers' Compensation Program, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; (d) continue to maintain the Workers' Compensation Security and any other security maintained in respect of the Insurance Programs (collectively, the "Insurance Security"); (e) to continue to pay all amounts due and owing with respect to the Automobile and General Liability Programs, including funding the Broadspire Escrow relating to Workers' Compensation Claims up to the amount of up \$600,000 for the first six (6) months following the Petition Date; and (f) maintain and continue to make post-petition payments with respect to the Insurance Programs, including, among other things, paying premiums, deductibles, and paying other amounts due on an uninterrupted basis; and it is further

ORDERED that Debtor is authorized to maintain and continue on an uninterrupted basis any and all pre-petition practices and payments on a post-petition basis with respect to the Insurance Programs, including without limitation, renewal and/or continuation, if Debtor so elects in the exercise of its business judgment, of any of the Insurance Programs that may expire post-petition; and it is further

ORDERED that Debtor is authorized to issue new post-petition checks, or effect new fund transfers, on account of the Pre-Petition Insurance Program Obligations to replace any pre-petition checks or fund transfer requests that may be dishonored or rejected; and it is further

ORDERED that Debtor's banks and financial institutions that process, honor, and pay any and all checks, or fund transfers, on account of obligations to be paid pursuant to this Order are authorized to do so and may rely on the representations of Debtor as to which checks are issued and authorized to be paid or funds are transferred in accordance with this Order without any duty of further inquiry and without liability to any party for following Debtor's instructions; and it is further

ORDERED that to the extent that the Insurance Programs, or any related contract or agreement, are deemed executory contracts, the relief granted hereby shall not be deemed an assumption of any such contract pursuant to Bankruptcy Code § 365; and further

That nothing in this Order or the Motion is intended or shall be construed to constitute relief from the automatic stay pursuant to Bankruptcy Code § 362.

Dated this the _____ of February 2009.

United States Bankruptcy Judge